*THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

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+WRIT PETITION No.24767 of 1997

%Dated 29-08-2007

#P.Venkatesh, Driver

… Petitioner

VERSUS

$The Regional Manager,
APSRTC, JBS.,Secundrabad.
And others

… Respondents

! Counsel for Petitioner : Sri V.Narsimha Goud

^Counsel for Respondents : Sri V.T.M.Prasad, Standing Counsel.

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? Cases referred

1.AIR 1963 SC 1723
2. AIR 1975 SC 2151
3.AIR 1976 SC 1080
4.AIR 1983 SC 1102
5.(1996) 6 SCC 750
6· (2000) 1 SCC 416
7.AIR 1997 SC 1030
8.(2006) 2 SCC 584
9.(1997) 7 SCC 463
10.(1995) 6 SCC 749
11.(2005) 3 SCC 254
12.(2005) 7 SCC 338
13.(2006) 2 SCC 541

14.(1991) Suppl-1 SCC 504
15.(1987) 4 SCC 611

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WRIT PETITION No.24767 of 1997

Dated:29 .08.2007

Between:

P.Venkatesh, Driver.

... Petitioner

AND

The Regional Manager,
APSRTC, J.B.S., Secundrabad,

And others.

... Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.24767of 1997

ORDER:-

The order dated 31.3.1994 of respondent No.1 who modified the orders passed by respondent No.3 and as confirmed by respondent No.2 in removing the petitioner from service and substituting the same with the punishment of reducing the petitioner's pay by two incremental stages for a period of two years with cumulative effect apart from treating the period from the date of his removal till he reports for duty as not on duty for all purposes, is questioned in this writ petition.

The petitioner was appointed as Driver in Andhra Pradesh State Road Transport Corporation (for short 'the Corporation') on 28.12.1979 and posted at Dilsukhnagar depot. On 24.6.1981 he was transferred to Uppal Depot and later to Kushaiguda depot in the year 1989. The petitioner absented to his duties unauthorisedly from 11.2.1990 to 15.4.1990. Before his absence, he reported sick and took treatment in

APSRTC Hospital, Tarnaka from 11.1.1990 to 10.2.1990.

In view of the petitioner's unauthorized absence from 11.2.1990, a charge sheet was issued on 17.4.1990 by framing two charges which read as under:

> " Charge No.1: For having absented from duties unauthorisedly from 11.2.1990 t0 15.4.1990 without obtaining prior sanction of leave or intimation which constitutes misconduct under Regulation 4(1) of APSRTC Employees (Conduct) Regulations, 1963.
>
> Charge No.2: For having failed to continue treatment at APSRTC Hospital, Tarnaka when not well thus violating the Reg.11(2) of APSRTC Employees (Leave) Regulations, 1963."

The petitioner filed his explanation in which it was stated that as he was not cured of piles disease despite his taking treatment in APSRTC Hospital from 11.1.1990 till 10.2.1990, he went to his native place and took country medicine. He also stated that he cannot be compelled by the Corporation to take treatment only in the hospital of the Corporation. He therefore, submitted that he is not guilty of either of the two charges.

Not being satisfied with the petitioner's explanation, an enquiry officer was appointed who submitted his report after completion of enquiry. Respondent No.3 after considering the enquiry report in which the petitioner was found guilty of both the charges passed orders in proceedings No.P3/1(9)/90-KG dated 20.2.1991 whereby he removed the petitioner from service. The petitioner was unsuccessful in his appeal filed before the Divisional Manager, Secunderabad Division who vide his proceedings No.PA/20(81)/92.DVM.SD, dated 23.10.1992 dismissed the appeal and confirmed the order of respondent No.3. The petitioner thereafter filed a review petition before respondent No.1. By his order dated 31.3.1994 impugned in this writ petition, respondent No.1 while affirming the view taken by respondents 3 and 2, however

modified the order of removal by substituting the punishment as mentioned supra. The petitioner filed this writ petition assailing the legality and validity of the said order.

Heard Sri V.Narsimha Goud and Sri V.T.M.Prasad, learned Standing Counsel for the Corporation appearing for the respondents.

Learned counsel for the petitioner submitted that the modified punishment imposed by respondent No.1, which has far reaching effect on the petitioner's career is too disproportionate to the gravity of the alleged misconduct. He therefore submitted that the order of the 1st respondent is liable to be set aside.

Opposing the contentions of the learned counsel for the petitioner, the learned Standing Counsel submitted that though the petitioner's unauthorized absence is for a period of about 65 days, the petitioner does not enjoy clean record. He invited my attention to the averments in paragraph-3 of the counter affidavit dated 24.7.2007 filed by the Regional Manager, City Region of the Corporation and submitted that as the petitioner had earlier suffered some punishments, respondent No.1 though satisfied with the correctness of the orders passed by respondents 3 and 2 however took a lenient view and imposed a lesser punishment and that the discretion exercised by the reviewing authority does not call for interference by this Court.

I have given my earnest consideration to the respective submissions of the learned counsel appearing for the parties.

The law regarding the scope of judicial review in disciplinary matters can be taken to be well settled. The Courts while examining the orders of the domestic tribunals in disciplinary cases does not sit in appeal over their decisions and substitute its views. Unless the Courts find that the findings are based on no evidence or the conclusions

drawn by the domestic tribunals are such that no person of reasonable prudence would ever come to such conclusions, they do not interfere with the orders of the domestic tribunals. (See **STATE OF ANDHRA PRADESH v. S. SREE RAMA RAO**[1], **STATE OF ANDHRA PRADESH v. CHITRA VENKATA RAO**[2], **K.L.SHINDE v. STATE OF MYSORE**[3], **JIWAN MAL KOCHAR v. UNION OF INDIA**[4], **B.C.CHATURVEDI v. UNION OF INDIA**[5], **HIGH COURT OF JUDICATURE AT BOMBAY THROUGH ITS REGISTRAR v. SHASHIKANT S PATIL**[6], **INDIAN OIL CORPORATION LIMITED v. ASHOK KUMAR ARORA**[7], **SOUTH BENGAL STATE TRANSPORT CORPN v. SWAPAN KUMAR MITRA**[8])

On the quantum of punishment, unless the court is satisfied that the punishment imposed is too excessive and shocks the judicial conscience, it would not interfere with the punishment imposed by the domestic tribunals. (See **UNION OF INDIA AND ANOTHER V G.GANAYUTHAM**[9], **OMKUMAR vs UNION OF INDIA**[10], **DIVISIONAL CONTROLLER, K.S.R.T.C. (N.W.K.R.T.C.) v A.T.MANE**[11], **V.RAMANA v APSRTC**[12], , **RAM SARAN v I.G. OF POLICE, CRPF AND ANOTHER**[13].)

Keeping in view the above stated legal position we shall now examine whether the punishment imposed on the petitioner is too harsh and disproportionate to the gravity of misconduct calling for interference by this Court.

The gravamen of the charges against the petitioner is that he

was un-authorisedly absent from duties from 11.2.1990 to 15.4.1990 without obtaining prior sanction of leave or intimation. Under charge No.2, the petitioner is also accused of discontinuing treatment at APSRTC Hospital, Tarnaka.

As regards charge No.2, the accusation against the petitioner is that he failed to continue his treatment at APSRTC Hospital, Tarnaka and that hence he violated Regulation 11(2) of the Employees (Leave) Regulations 1963. For proper appreciation, it is necessary to extract Regulation 11(2) hereunder:

> " **11.Procedure for obtaining leave on medical grounds:**
>
> (1) xxxxxxxxxxxx
>
> (2) The certificate from the medical attendant should distinctly state the nature of the illness, its symptoms, probable cause and duration, the period of absence from duty considered to be absolutely necessary for the restoration of the applicant's health and the date from which such absence should take effect, and should be sent so as to reach the employee's immediate superior officer within forty-eight hours of his absenting himself from duty."

It is difficult to comprehend the charge that petitioner's discontinuance of treatment at APSRTC Hospital constitutes misconduct. As rightly pleaded by the petitioner that he cannot be forced upon to take treatment only in a particular hospital and his failure to continue treatment in the said hospital, in my view cannot constitute misconduct. It is a different matter that the petitioner may have violated the leave regulations of the Corporation. However that would have no nexus with the petitioner's discontinuance of treatment at

APSRTC Hospital, Tarnaka. On a careful consideration, I am of the view that charge No.2 is frivolous in nature and no person with reasonable prudence would come to the conclusion that an employee's discontinuance of treatment in the employer's hospital constitutes misconduct. The charge totally falls outside the scope of the Regulation. Thus charge No.2 should fall to ground.

There however remains charge No.1 under which the petitioner is held guilty of unauthorized absence from 11.2.1990 to 15.4.1990. The petitioner has submitted some medical certificates in order to explain his absence during that period. But none of the authorities of the Corporation believed the same. Therefore, this Court cannot interfere with the finding of the disciplinary authority and as confirmed by the appellate and reviewing authorities that the petitioner unauthorisedly absented himself for a period of about 65 days.

The question which is required to be considered is whether the modified punishment imposed on the petitioner is too harsh and disproportionate to the gravity of misconduct. In para-3 of the counter affidavit, the Regional Manager of the Corporation mentioned as under:

> " It is respectably submitted that the petitioner was appointed as temporary Heavy Vehicle Driver on 28.12.1979 and he was posted to Dilsukhnagar depot. Later he was transferred to Uppal depot on 24.6.1981 on formation of Uppal depot. Subsequently he was transferred to Kushaiguda depot in the year 1989. It is submitted that the contention of the petitioner that he was discharging his duties with best of his ability till he was terminated from service, is not correct. He is bereft of clean record. He was imposed the punishment of deferment of increments on two occasions and he was censured for absenting for duties on two occasions and he was also censured in cash irregularities and was also charge-sheeted once for rash and negligent driving."

Relying on these averments, the learned Standing Counsel submitted that in view of the petitioner's past record the punishment

imposed upon him cannot be said to be disproportionate to the misconduct proved against the petitioner.

The charges, which are already extracted above, do not make any reference to the punishments imposed on the petitioner on earlier occasions. The orders of respondents 3 and 2 are also silent on this aspect. It is interesting to note that while agreeing with the orders passed by respondents 3 and 2, respondent No.1 modified the order of punishment with the reasoning contained in the penultimate para of the order which is reproduced hereunder:

> " However, considering his 13 years of service in the organization without any major punishment and purely on humanitarian grounds I am taking a lenient view and order his reinstatement into service. On reinstatement his pay shall be reduced by two incremental stages for a period of (2) years with cumulative effect. The period from the date of his removal till he reports for duty at the place of posting shall be treated as 'not on duty' for all purposes. He shall be directed for Drivers intensive training for a period of (30) days at the Regional Staff Training College (BR). During the training period the petitioner is not entitled for any wages. He shall pay fresh security deposit."

It is therefore quite evident that while the disciplinary and appellate authorities have not taken into consideration the past conduct of the petitioner in imposing the punishment of removal and confirming the same respectively, the reviewing authority while reducing the punishment considered the fact that the petitioner had not suffered any major punishment. Therefore, the attempt of the respondents to press into service the past conduct of the petitioner for the first time in the counter affidavit which was filed a few days before the conclusion of the hearing of the writ petition does not in my view justify the punishment.

Though under Classification, Control and Appeal Regulations 1967 of the Corporation withholding of increments is shown to be a

minor punishment, in **Kulwant Singh Gill Vs. State of Punjab**[14] the Supreme Court while dealing with a similar provision of Punjab Civil Services (Punishment and Appeal) Rules 1970 held as under:

> "Withholding of increments of pay simplicitor undoubtedly is a minor penalty within the meaning of Rule 5 (iv). But sub-rule (v) postulates reduction to a lower stage in the time scale of pay for a specified period with further -directions as to whether or not the government employee shall earn increments of pay during the period of such reductions and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay. It is an independent head of penalty and it could be imposed as punishment in an appropriate case. It is one of the major penalties. The impugned order of stoppage of two increments with cumulative effect whether would fall within the meaning of Rule 5 (v)? If it so falls Rules 8 and 9 of the Rules require conducting of regular enquiry. The contention of Shri Nayar, learned counsel for the State is that withholding two increments with cumulative effect is only a minor penalty as it does not amount to reduction to a lower stage in the time scale of pay. We find it extremely difficult to countenance the contention. Withholding of increments of pay simplicitor without any hedge over it certainly comes within the meaning of Rule 5 (iv) of the Rules. But when penalty was imposed withholding two increments i.e. for two years with cumulative effect, it would indisputably mean that the two increments earned by the employee was cut off as a measure of penalty for ever in his upward march of earning higher scale of pay. In other words the clock is put back to a lower stage in the time scale of pay and on expiry of two years the clock starts working from that stage afresh. The insidious effect of the impugned order, by necessary implication, is that the appellant employee is reduced in his time scale by two places and it is in perpetuity during the rest of the tenure of his service with a direction that two years' increments would not be counted in his time scale of pay as a measure of penalty. The words are the skin to the language which if peeled off its true colour or its resultant effects would become apparent. When we broach the problem from this perspective the effect is as envisaged under Rule 5 (v) of the Rules. It is undoubted that the division bench in Sarwan Singh v. State of Punjab, P. C. Jain, A. C.. speaking for the Division bench, while considering similar question, in paragraph 8 held that stoppage of increments with cumulative effect, by no stretch of imagination falls within

clause (v) of Rule 5 or in Rule 4 12 of Punjab Civil Services Rules. It was further held that under clause (v) of Rule 5 there has to be a reduction to a lower stage in the time scale of pay by the competent authority as a measure of penalty and the period for which such a reduction is to be effective has to be stated and on restoration it has further to be specified whether the reduction shall operate to postpone the future increments of his pay. In such cases withholding of the increments without cumulative effect does not at all arise. In case where the increments are withheld with or without cumulative effect the government employee is never reduced to a lower stage of time scale of pay. Accordingly it was held that clause (iv) of Rule 5 is applicable to the facts of that case. With respect we are unable to agree with the High court. If the literal interpretation is adopted the learned Judges may be right to arrive at that conclusion. But if the effect is kept at the back of the mind, it would always be so, the result will be the conclusion as we have arrived at. If the reasoning of the High court is given acceptance, it would empower the disciplinary authority to impose, under the garb of stoppage of increments, (sic stoppage) of earning future increments in the time scale of pay even permanently without expressly staling so. This preposterous consequence cannot be permitted to be permeated. Rule 5 (iv) does not empower the disciplinary authority to impose penalty of withholding increments of pay with cumulative effect except after holding inquiry and following the prescribed procedure. Then the order would be without jurisdiction or authority of law, and it would be per se void. Considering from this angle we have no hesitation to hold that the impugned order would come within the meaning of Rule 5 (v) of the Rules; it is a major penalty and imposition of the impugned penalty without enquiry is per se illegal."

The punishments imposed on the petitioner, which are three fold, namely; reduction of the petitioner's pay by two incremental stages for a period of two years with cumulative effect, which has insidious effect of reduction in time scale as held by the Supreme Court in **Kulwant Sing Gill**, treating the period from the date of his removal till his reporting for duty as not on duty and denying wages to the petitioner during the period of 30 days, in my considered view are too severe and disproportionate which indeed disturbs the conscience of the Court. As

held by the Supreme Court in **Ranjit Thakur Vs. Union of India**[15] punishment has to suit the offence and the offender. After giving a serious thought to the nature of misconduct and the penalties imposed on the petitioner, I am of the considered view that the petitioner is liable for lesser punishment.

For the reasons aforementioned, I hold that the modified punishment imposed on the petitioner is too disproportionate to the gravity of the misconduct proved against the petitioner.

In the result, order dated 31.3.1994 passed by the 1st respondent is hereby set aside and the 1st respondent is directed to reconsider the case of the petitioner on the quantum of punishment to be imposed upon him in the light of the findings given hereinabove.

C.V.NAGARJUNA REDDY,J

Date: 29 .08.2007
mdaa

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[1] AIR 1963 SC 1723
[2] AIR 1975 SC 2151
[3] AIR 1976 SC 1080
[4] AIR 1983 SC 1102
[5] (1996) 6 SCC 750
[6] (2000) 1 SCC 416
[7] AIR 1997 SC 1030
[8] (2006) 2 SCC 584
[9] (1997) 7 SCC 463
[10] (1995) 6 SCC 749

[11] (2005) 3 SCC 254

[12] (2005) 7 SCC 338

[13] (2006) 2 SCC 541

[14] (1991) Suppl-1 SCC 504

[15] (1987) 4 SCC 611